International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Tunisia under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Tunisia under article 29 (1) of the Convention (CED/C/TUN/1) at its 158th and 159th meetings (see CED/C/SR.158 and 159), held on 7 and 8 March 2016. At its 170th meeting, held on 15 March 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Tunisia under article 29 (1) of the Convention, drafted in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation from the State party on the measures taken to implement the provisions of the Convention. In addition, the Committee thanks the State party for its written replies (CED/C/TUN/Q/1/Add.1) to the list of issues (CED/C/TUN/Q/1), which were supplemented by the oral responses provided by the delegation during the dialogue, and the additional information provided in writing.

B. Positive aspects

3. The Committee commends the State party for having ratified almost all of the core United Nations human rights instruments and most of their optional protocols.

4. The Committee also commends the State party on the measures taken in areas related to the Convention, including:

(a) The adoption of the new Constitution of Tunisia, on 26 January 2014;

(b) The adoption of Organizational Act No. 53, concerning the establishment and organization of a system of transitional justice, on 24 December 2014, and the establishment of the Truth and Dignity Commission, on 30 May 2014;

(c) The adoption of Organizational Act No. 43, concerning the National Commission for the Prevention of Torture, on 21 October 2013.

* Adopted by the Committee at its tenth session (7-18 March 2016).

5. The Committee appreciates the information provided by the State party regarding consultations with civil society in the preparation of its report under article 29 (1) of the Convention and of its replies to the list of issues.

6. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

7. The Committee welcomes the significant efforts and progress made by the State party in the field of human rights since the 2011 revolution. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party and the performance of some of its competent authorities were not yet in full compliance with the obligations incumbent on States that have become parties to the Convention. The Committee calls upon the State party to implement its recommendations, which have been made in a constructive spirit of cooperation to assist the State party in giving effect in law and in practice to its obligations under the Convention. The Committee encourages the State party to use the fact that a number of legislative initiatives are currently under consideration as an opportunity to implement the recommendations of a legislative nature made in the present concluding observations and to give effect to any obligations under the Convention that are not yet fully covered in domestic law.

General information

Individual and inter-State communications

8. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention. However, the Committee notes with interest the State party's intention to make the declarations provided for in these two articles and that it has initiated the relevant procedures to do so (arts. 31-32).

9. **The Committee encourages the State party to expedite the procedures for making the declarations set out in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications, with a view to strengthening the framework for protection against enforced disappearances provided for in the Convention.**

National human rights institution

10. The Committee is concerned that the Higher Committee for Human Rights and Fundamental Freedoms is not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). However, it notes with appreciation that the State party is currently working on a draft law to govern the independent human rights institution provided for in article 128 of the 2014 Constitution, in line with the Paris Principles.

11. **The Committee recommends that the State party expedite the adoption of the draft law governing the independent human rights institution provided for in article 128 of the Constitution and guarantee that the new institution is in full compliance with the Paris Principles.**

Definition and criminalization of enforced disappearance (arts. 1-7)

Non-derogability of the prohibition of enforced disappearance

12. The Committee notes with concern that domestic law does not specifically provide for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances (art. 1).

13. **The Committee recommends that the State party take the legislative measures necessary to specifically incorporate into domestic law an absolute prohibition of enforced disappearance, in line with article 1 (2) of the Convention.**

Offence of enforced disappearance

14. The Committee is concerned that an autonomous offence of enforced disappearance has not yet been incorporated into the State party's legislation. In this respect, the Committee takes note of the information provided by the State party indicating that the proposed draft law on enforced disappearance that it had annexed to its report (CED/C/TUN/1) and subsequently withdrawn from that report (see CED/C/TUN/Q/1/Add.1, para. 8), has been submitted neither to the Council of Ministers nor to Parliament; that a technical committee would revise the initial draft law bearing in mind the observations made by the Committee; and that a new draft law would be submitted to Parliament in 2016. In addition, the Committee regrets not having received information about the current status of the bill relating to crimes against humanity referred to in paragraph 67 of the State party's report and notes that national legislation does not yet specifically criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (arts. 2 and 4-7).

15. **The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:**

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty. It also invites the State party to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.**

Criminal responsibility of superiors

16. The Committee notes with concern that the legislation in force in the State party is not in full compliance with the obligation arising under article 6 (1) (b) of the Convention relating to the criminal responsibility of superiors (art. 6).

17. **The Committee recommends that the State party take the legislative measures necessary to ensure that domestic law specifically provides for the criminal responsibility of superiors in accordance with article 6 (1) (b) of the Convention.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Statute of limitations

18. The Committee notes with appreciation that enforced disappearances covered by Organizational Act No. 53 are not subject to a statute of limitations. However, it regrets not having received adequate information about the system of statute of limitations that would apply to acts of enforced disappearance if they were committed after the period covered by the Act (art. 8).

19. **In the light of article 8 of the Convention, the Committee recommends that the State party adopt the legislative or other measures necessary to ensure that the term of limitations for criminal proceedings brought forward in respect of enforced disappearances not covered by Organizational Act No. 53 is of long duration; that it is proportionate to the extreme seriousness of the offence; and that, taking into account the continuous nature of enforced disappearance, it commences from the moment when the offence ceases (inter alia, from the moment when the disappeared person is found alive, in the event of death, when his or her remains are found and identified, or when the identity of a child subjected to wrongful removal is restored). The Committee encourages the State party, when criminalizing enforced disappearance as an autonomous offence, to provide that the offence is not subject to any statute of limitations.**

Military jurisdiction

20. The Committee is concerned that acts of enforced disappearance may fall under the jurisdiction of military courts given that, under legislation currently in force, members of the military accused of an offence under ordinary or military law, as well as civilians in specific cases, will be brought before military courts, with the exception of terrorist offences. While recalling its position that, as a matter of principle, military courts do not provide the independence and impartiality required by the Convention to hear cases involving human rights violations such as enforced disappearances, the Committee notes with interest the information provided by the State party that a technical committee is currently working on draft legislation to bring domestic law relating to military jurisdiction into line with relevant constitutional and international standards (art. 11).

21. **The Committee, recalling its statement on enforced disappearance and military jurisdiction (see A/70/56, annex III), recommends that the State party take the legislative or other measures necessary to ensure that cases of enforced disappearance are expressly excluded from military jurisdiction and can only be investigated and tried by the competent civil authorities.**

Transitional justice

22. The Committee welcomes the system of transitional justice established pursuant to Organizational Act No. 53, including its references to enforced disappearance. While noting with concern that the investigations into the alleged enforced disappearances of Kamel Matmati (since 1991), Fathi Louhichi (since 1996) and Walid Hosni (since 2009) have still not been concluded, despite the amount of time that has elapsed since the reported perpetration of those disappearances, the Committee notes that the Truth and Dignity Commission has initiated investigative inquiry procedures in relation to those cases. The Committee also notes that the Commission has received a number of complaints related to enforced disappearances and that it is working to identify the places where victims' bodies have been buried. In addition, the Committee notes with interest the measures taken by the

Commission concerning reparation, including urgent reparations being provided in relation to health needs, and observes that it is working to put in place a comprehensive reparations programme (arts. 11-12 and 24).

23. **The Committee recommends that the State party intensify its efforts to ensure that, without delay:**

(a) **All past cases of enforced disappearance are investigated thoroughly and impartially and that investigations continue until the fate of the disappeared persons has been clarified;**

(b) **All those involved in the perpetration of an enforced disappearance, including military and civilian superiors, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;**

(c) **All persons who were forcibly disappeared and whose fate is not yet known are searched for and located and that, in the event of death, their remains are identified, respected and returned;**

(d) **All persons who have suffered harm as the direct result of an enforced disappearance receive adequate reparation that includes the means for their rehabilitation and takes account of gender issues, as well as prompt, fair and adequate compensation.**

24. **In this respect, the Committee also recommends that the State party: (a) continue ensuring that all the organs responsible for the investigation into the cases of enforced disappearances covered by Organizational Act No. 53, the search of the disappeared persons and the provision of reparation to the victims, particularly the Truth and Dignity Commission, have the financial, technical and human resources necessary to enable them to carry out their work promptly and effectively; and (b) take the measures necessary to guarantee that all public entities cooperate with these organs and provide them all the necessary assistance within their power.**

Protection of persons participating in an investigation

25. The Committee welcomes the fact that article 40 of Organizational Act No. 53 authorizes the Truth and Dignity Commission to adopt appropriate measures to protect victims, witnesses, experts and all those whose statements are to be heard in connection with human rights violations. Furthermore, the Committee takes note of article 65 of the Code of Criminal Procedure, which stipulates that witnesses should not be heard in the presence of defendants, as well as of the information provided by the State party that other pieces of legislation also include measures for the protection of witnesses. Furthermore, the Committee notes with interest the information provided by the State party indicating that the mechanisms that protect complainants, witnesses and relatives against all forms of intimidation are being reviewed by the committee attached to the Ministry of Justice that is responsible for the amendments of the Criminal Code (see CED/C/TUN/Q/1/Add.1, para. 14) (art. 12).

26. **The Committee recommends that the State party adopt the measures necessary to ensure, in law and in practice, that all persons referred to in article 12 (1) of the Convention are protected against any ill-treatment or intimidation as a consequence of a complaint made or any evidence given in the framework of an investigation into an enforced disappearance.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

27. The Committee is concerned that the State party has not yet adopted a legal framework on asylum, although it notes with interest the information provided by the State party that a bill on the right of asylum is currently being drafted and that the bill will be consistent with the Convention. In addition, the Committee observes that domestic law does not yet provide for an explicit prohibition against refoulement where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance (art. 16).

28. **The Committee recommends that the State party adopt the measures necessary to ensure, in law and in practice, that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all circumstances. In particular, the Committee recommends that the State party: (a) expedite the adoption of a legal framework on asylum and ensure that it provides for the guarantees necessary to prevent any risk of refoulement where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance; and (b) consider incorporating into domestic law an explicit prohibition against carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance.**

Fundamental legal safeguards

29. The Committee is concerned about allegations that, in some instances: (a) relevant authorities have failed to immediately notify the relatives of persons placed in custody of the measures taken against those persons and the place of custody or to provide relatives and lawyers with access to information about persons deprived of liberty; and (b) records of persons deprived of liberty have not been promptly and accurately filled out and updated. Furthermore, the Committee is concerned about information received indicating that Organic Law No. 22/2015 on the fight against terrorism and money-laundering of 24 July 2015 does not guarantee access to a lawyer or relatives during the custody period, thus allowing the police to hold suspected terrorists in incommunicado detention for up to 15 days, with a prosecutor's consent after the fifth day. In this respect, the Committee welcomes the fact that the amendment to the Code of Criminal Procedure, which was adopted in February 2016 and will enter into force in June 2016, guarantees access to a lawyer from the outset of the deprivation of liberty, but is still concerned that the amendment stipulates an exception for suspected terrorists, who can be prevented from meeting their lawyer for up to 48 hours (arts. 17-18, 20 and 22).

30. **The Committee recommends that the State party adopt all the measures necessary to ensure that all persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, de jure and de facto, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided under article 17 of the Convention. In particular, the Committee recommends that the State party guarantee that:**

(a) **All persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with their relatives or any person of their choosing and, in the case of foreigners, with their consular authorities;**

(b) **Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the custody period;**

(c) **All deprivations of liberty, without exception, are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;**

(d) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24-25)

Definition of victim and right to receive reparation and prompt, fair and adequate compensation

31. The Committee observes with appreciation the system of reparation provided for in Organizational Act No. 53. However it is concerned that, outside the scope of that Act, domestic law neither provides for a definition of victim that conforms to that contained in article 24 (1) of the Convention nor contains a system of comprehensive reparation for which the State party is responsible and which includes, besides compensation, all the reparatory measures provided for under article 24 (5) of the Convention (art. 24).

32. **The Committee recommends that the State party take the measures necessary to ensure that domestic law, outside the scope of Organizational Act No. 53, provides for:**

(a) **A definition of victim that conforms to that contained in article 24 (1) of the Convention, in order to ensure the full enjoyment by any individual who has suffered harm as the direct result of an enforced disappearance of the rights set forth in the Convention, including the right to reparation;**

(b) **A comprehensive, gender-sensitive system of reparation and compensation that is fully in line with article 24 (4) and (5) of the Convention and other relevant international standards, for which the State is responsible and which is applicable even if no criminal proceedings have been initiated.**

Legislation concerning the wrongful removal of children

33. While taking note of the current criminal law provisions dealing with abduction of children and forgery, the Committee is concerned that the actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention are not specifically criminalized (art. 25).

34. **The Committee recommends that the State party adopt the legislative measures necessary to make the actions referred to in article 25 (1) of the Convention specific offences and that it establish appropriate penalties for such actions that take into account their extreme seriousness.**

D. Dissemination and follow-up

35. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments. In particular, the Committee urges

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the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims, as set forth in the Convention.

36. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

37. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of victims, in the actions taken in line with the present concluding observations.

38. Noting that the State party submitted its core document in 1994 (HRI/CORE/1/Add.46), the Committee invites the State party to update it in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN.2/Rev.6, chap. I).

39. In accordance with the Committee's rules of procedure, the State party should provide, by 18 March 2017 at the latest, information on its implementation of the recommendations contained in paragraphs 15, 23 and 30.

40. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 18 March 2022, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (see CED/C/2, para. 39). The Committee encourages the State party, when preparing this information, to continue consulting civil society, including organizations of victims.